

House of Representatives Education and Employment Committee inquiry into workplace bullying.

Submission by Dr Moira Jenkins. Adjunct Lecturer University of Adelaide. 'Aboto' Psychology and Workplace Conflict Management Services. www.aboto.com.au

1. The prevalence of workplace bullying in Australia and the experience of victims of workplace bullying;

It is difficult to estimate the prevalence of bullying in Australia because the studies that have examined workplace bullying have used different definitions, and ways of measuring the phenomena. Furthermore, and there is no consistency in definition throughout the current legislative frameworks for bullying, although that is due to change with the harmonisation of the Workplace Safety legislation. While most definitions include 'Repeated' behaviours as part of the definition, others exclude specific behaviours (Queensland Guidance note excludes sexual harassment). The South Australian definition of bullying in the OHSW Act states the behaviour must be "Systematic" to meet the definition of bullying. Other States do not have this requirement. There is also an overlap between what we know as bullying and sexual harassment and unlawful discrimination. Both sexual harassment and unlawful discrimination can be bullying if the acts of sexual harassment or unlawful discrimination involve repeated inappropriate behaviours. While discrimination and sexual harassment are not traditionally examined from within an OH&S framework (as workplace bullying is), they too can contribute to employees suffering health problems and injury, especially if the discriminatory and harassing behaviours are repeated.

The notion of "Systematic acts" that is contained in Section 55 of the South Australian OHS legislation is problematic, as it raises the threshold of behaviours that are considered bullying, and requires that bullying behaviours be "systematic" in order to fit the definition. Systematic also infers intent, in that there needs to be a system or pattern to the behaviours. Intent in regard to bullying behaviours is very difficult to prove, and it is recommended that like sexual harassment, the

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behaviour, if repeated, and deemed un reasonable should not have to be systematic to be labelled bullying.

Employee definitions of Bullying: Adding to the complexity

Adding further complexity to both the measurement and definition of bullying is interpretation of the word 'bullying' by employees. The research shows that employee accounts of workplace bullying suggest that the term is used in a very different way than that defined in the literature. Employees categorise a number of negative workplace experiences under the wider umbrella of bullying (Lewis, Sheehan & Davies, 2008). Employee accounts of bullying have been found to describe a number of negative workplace interactions that do not necessarily describe *interpersonal* interactions, behaviours or conflicts, but a negative relationship with the wider organisation. These include systemic concerns such as high unrealistic case loads, feeling continued pressure to perform, as well as other organisational systems or processes that negatively affect the way employees carry out their job (Lewis et al., 2008). Lewis and his colleagues (2008) report that employee labels of bullying include failures of an organisation to provide adequate staffing and implementation of practices sanctioned by the organisation that result in them feeling oppressed by the conditions in which they have to carry out their work. This wider interpretation of bullying, and use of the term *bullying* as a description of discontent is supported in research by Liefoghe and MacKenzie-Davy (2003, 2010), who found that employees did not limit themselves to a recognised definition of bullying, but called a number of organisational practices and conflicts bullying. This research is based on a number of qualitative case studies and focus groups. Using discourse analysis, the authors focused on how the term *bullying* is used in by employees in the organisations they studied. Their results challenge the definition of bullying

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used in the literature and they found that employees use the term *bullying* at a much higher frequency and as a broad term to describe a wide range of negative organisational practices that do not necessarily fit with the recognised definition.

This research found that while employees recognised the established definitions of bullying, they also labelled unpopular organisational practices and management decisions, such as appraisal systems and enforcing changes in contractual obligations, as bullying. This 'lay' interpretation of bullying has implications when allegations are made by workers who may be disgruntled with management decisions and organisational practices. This is an important contribution to the bullying debate because it draws attention away from the predominantly personalised accounts of bullying that are emphasised in most of the literature and draws attention to the perceptions and impact of work practices and systems on employees as depersonalised forms of bullying within employment processes.

These issues have a significant impact in determining the prevalence of workplace bullying in Australia. The prevalence of bullying is determined very much by the way it is measured. Zapf and his European colleagues reported that large scale analysis of bullying studies in Europe suggest that between 10 and 15% of workers are bullied, with between 3-4% being exposed to serious bullying. However, this figure changes dramatically if workers are not given a definition of bullying, rather, they are asked whether they have been 'bullied'. Results of *self labelled* bullying without a definition suggest that up to 20% of employees may be exposed to negative behaviours that while not meeting the definition of bullying, do present significant stressors (Zapf, Escartin, Einarsen, Hoel and Vartia, 2011). Because

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workplace bullying is an escalating process, it can be assumed that these workers may be exposed to bullying in the future the negative acts they are exposed to escalate into workplace bullying.

While there are no studies that report the prevalence of workplace bullying in the Australian workforce as a whole, there have been a number of state-based public-sector surveys that have indicated that the incidence of bullying is between 22 per cent in South Australia and 20 per cent in Western Australia. Similar figures were reported for Tasmanian public servants, where in 2005, 26 per cent believed they had been subject to harassment or bullying in the workplace over the previous 12 months (State of the Services Report, 2006–2007). The level of South Australian public servants reporting that they had experienced bullying behaviour in 2004 remained the same as the 2003 level of 26 per cent.

While these results are very high, they measure workplace bullying by asking one very subjective question. Respondents were simply asked whether they thought they had been exposed to (or witnessed) bullying or *harassment* in a given time period. (They were asked: 'During the last 12 months have you experienced bullying or harassment in your workplace?').

Standardised and valid research is needed in order to accurately report the prevalence of bullying within the Australian workplace. To date this had not been carried out. Such research can only be achieved through the development of a national research centre and adequate funding that enables the design of valid and reliable research that is methodologically rigorous.

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2. The role of workplace cultures in preventing and responding to bullying and the capacity for workplace-based policies and procedures to influence the incidence and seriousness of workplace bullying;

Studies have identified several organisational factors, (risk factors) including workplace cultures that can contribute to bullying behaviours emerging and developing within organisations. This risk management framework has been established as best practice in both preventing and addressing workplace bullying. However, it is applied on an ad hoc basis.

The research has identified five main classes of risk for bullying. These are

1. The industrial climate and the way the work is organisedⁱ
2. The social culture of the workgroupⁱⁱ
3. Leadership and management styles
4. Lack of systems and policies
5. Individual characteristics of the targets and perpetrators.ⁱⁱⁱ

Workplace bullying, usually occurs because of an interaction between some of these risk factors. For example, an employee is less likely to bully or sexually harass another if the organisation has policies in relation to respectful workplace behaviour, all employees have had training on their rights and responsibilities, and the workgroup manager intervenes early to prevent and halt any inappropriate behaviour that they witnesses or hear about. A perpetrator is less likely to bully if they are aware that their behaviour will not be tolerated. Organisations that are understaffed, facing significant change and restructuring, or where there are high levels of stress are more likely to have managers and employees behaving badly if these risk factors are not monitored and addressed.

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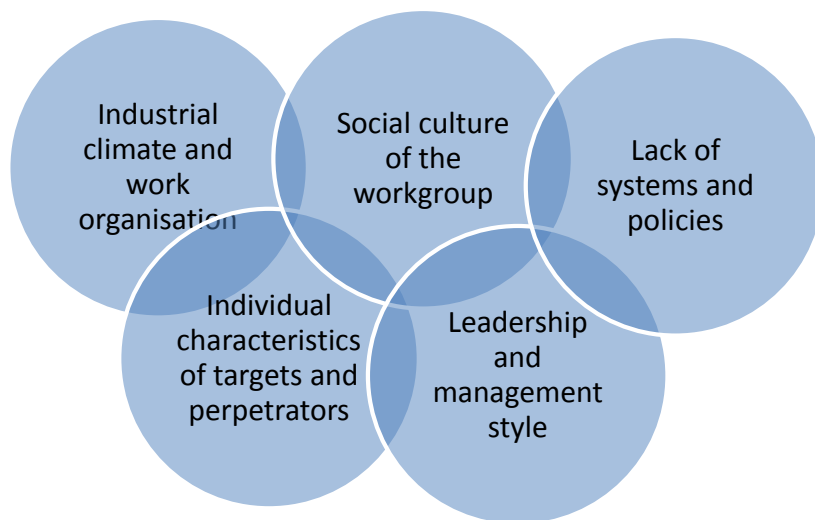


Figure 4. Risk factors to workplace bullying

Industrial climate and work organisation

Studies have shown that both targets and observers of bullying are likely to report high levels of confusion about their role and their job when there are perceptions of contradictory expectations, demands and goals. Similarly, bullying has been found to be closely related to a work environment where there are unclear roles and command structures. In one study, more than a decade of bullying research was examined and it was found that the bullying tended to occur in work environments where stressors such as competing job demands and expectations

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from others, and role ambiguity (not being sure about what jobs you are required to carry out), role overload (too many tasks and not enough time to carry them all out) and lack of autonomy (being dependent on others in order to carry out your own job) were present. Role conflict and ambiguity were the strongest predictors of workplace bullying in this research analysis, with lack of control over one's work environment also being strongly associated with bullying at work.^{iv}

The interviews that I conducted as part of my PhD thesis confirmed many of the findings from these larger and more representative studies. The interviews with both targets and alleged perpetrators illustrated that bullying often occurred in negative and stressful working environments. I found that both targets of bullying, and managers who had been accused of bullying, reported working conditions that were stressful and negative. Within this stressful environment, role conflict and uncertainty were raised by a number of study participants as contributing to the bullying.

For example, one team leader who I interviewed reported that at the time a bullying allegation was made against her, she was performing a number of roles that she believed were outside her job description because of significant staff shortages and changes taking place in her workplace (a hospital). She was also trying to manage a team of nurses who were also stressed and displaying bad behaviours themselves. She described herself as being anxious and stressed, and said that staff had told her that she was becoming aggressive. She was later accused of bullying by a member of her staff, she had earlier reprimanded for inappropriate behaviours. The complaint against her was investigated, but was not substantiated. Despite

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this she had over a year off work due to anxiety and depression that she occurred in response to high levels of workplace stress, and way the bullying allegations against her were managed. She said that every time she tried to return to work she would have panic attacks. She said that at one time during the investigation into the allegations against her she was suicidal.

I am a team leader for an emergency department, mental health unit. What happened in the beginning was that we were having a lot of trouble with our workplace. The staff weren't happy with the lack of staffing and resources that we had. There were no doctors for them to have support from. I was also finding it a very stressful time. The workload was huge. My job really should have been done by two people ... I started having to cover for doctors as well, so therefore I didn't have doctors in the emergency department, I didn't have doctors seeing mental health patients on the wards and I had to do both in each area. The nursing staff said that wasn't appropriate that I do that and I said, "well I know it's not, but it's all we have". I also had the management aspect of my job and so I was sort of working long hours..... The work load was huge. My job really should have been done by two people and I was expressing that, saying that that needed to happen. I was being told well that's not going to happen.

People started to comment that I was getting aggressive and I said well what do you mean by that? They are saying oh you are just very short with us all the time and I'm saying well I don't mean to be. I don't notice that I am and I would say to them that I am getting tired... there was a particular day where this male nurse told me that they didn't support me

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anymore, they weren't interested in me as a team leader and he said some things that were quite derogatory about me.

That was quite devastating because I thought that I was a good boss. They had more than any other team had in terms of education. I was always looking for them and sending them off to do some courses and things like that. I was always acknowledging that it was difficult for them. I would go over and I would help them out so I felt that I was doing all I could and he made it very clear that that's not how they felt and so I was in tears after that I got up and I left and I said right well I'm leaving now I'm not going to continue with this conversation and I left and I went back to my office and I was quite upset...

As well as staffing problems and role ambiguity, other organisational stressors that can contribute to bullying emerging include significant changes in the workplace such as downsizing, restructuring, the introduction of new systems, procedures or technology. Many of these risk factors are unavoidable, but if managed correctly they can be lessened and their impact on staff minimised. Large changes impact on the individuals who are affected by them and contribute to increased levels of stress, increased conflict, and defensive behaviours among staff. If they are not managed properly, poor behaviours that are caused by high levels of stress can escalate into bullying behaviours.

During times of change there may be greater job insecurity, uncertainty, and lack of autonomy as changes are implemented. Workers may be less likely to complain about

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inappropriate behaviours for fear of losing their jobs. When people are anxious, their conflict style can become reactive and managers can be autocratic rather than explanatory.

Anxious people often interpret neutral events in the environment (such as failure to say hello) as threatening, especially if there is underlying conflict. This can contribute to heightened arousal and the emergence of defensive behaviours which escalate the conflict. Workers and managers need significant support and clear communication with a consistent message to assist them during these transitions.

The social environment

Organisational social environments are the expectations, beliefs and standards that group members come to share and take for granted. A work group environment can differentiate itself from the wider organisational environment when attitudes and behaviours that may not be acceptable in the wider organisation are established in isolated pockets of the organisation. The difficulty that group members have in complaining about inappropriate behaviours illustrates the potential strength of social processes that occur within discrete workgroups. The way that targets react to the group behaviour can further isolate them from the work group where the inappropriate behaviours are considered as 'the norm'.

Conflict with group norms has been found to be a significant cause of workplace bullying and predatory bullying can occur in situations where the dominant group or a member of a

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dominant group will target a new group member because of their 'different' characteristics. Targets complaining about these norms or challenging them may become stigmatised and find it more difficult to become part of the group, exacerbating their isolation and victimisation. This sort of predator bullying towards individuals who challenge established social norms have led to a number of court cases in Australia, for example where women were bullied when they did not fit into the norms of male-dominated industries such as mining^v. In a similar manner, sexualised workplace cultures, that have been 'normalised' by team members, have led to sexual harassment complaints by women who have been targeted by a 'dominant group' that had normalised the sexualised environment within the workplace within the organisation^{vi}. Many perpetrators will only bully or harass others in the work group if the social environment of the work group allows or encourages such behaviour.

Social cultures in organisations where 'initiation' practices for new workers or apprentices are the norm cannot only present an OHS risk in themselves, but they can contribute to a worker who doesn't want to be subjected to such practices being excluded from the group and bullied by the group as a form of punishment. Humiliating jokes, humour and insults can sometimes be part of socialisation process but can turn into bullying if the target cannot defend themselves or does not take these behaviours as a joke. Departments that are characterised by high levels of conformity might be particularly susceptible to bullying, sexual harassment or unlawful discrimination.

In the court case *Horman v Distribution Group*^{vii} Ms Horman complained of inappropriate comments and physical encounters such as writing on her body with a felt tip pen, pulling her

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bra straps and touching her buttocks. She only complained about the behaviour after she was made redundant, and left the workplace. During the court case the organisation argued that she was a willing participant in this behaviour and actually instigated some of it herself. The organisation told the court that that they had an equal opportunity policy and complaints procedure, but Ms Horman did not follow the company procedures, making no complaint during her employment. While they agreed that there was some "horseplay" in the workplace, they said that Ms Horman was a willing participant in these activities and that she also used crude language and engaged in similar behaviour to the others in the workgroup. However, the magistrate found that a reasonable person in Ms Horman's position would have been offended, humiliated or intimidated by the behaviours and remarks in the workplace, despite the fact that she had participated in some of them. He found that management allowed the behaviour to go on and actually participated in behaviour themselves. He said that:

I am not sure that a reasonable person would not anticipate that the applicant would be offended, humiliated or intimidated by bad language solely because the applicant herself also used it from time to time. "Giving as good as you get" is often the only way in which a person feels he or she can resist unpleasant language and would not to my mind indicate to a reasonable person the type of acceptance of the language which would relieve a respondent of liability'.

This case illustrates how an inappropriate workplace social environment can contribute to complaints of bullying, sexual harassment or discrimination. It also illustrates how some

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targets of bullying or sexual harassment might also act badly themselves 'giving as good as they get' in order to survive a toxic culture.

Because management participated in the behaviour described by Ms Horman, they condoned and authorised the behaviour. Because of this, she was not able to complain, and may have participated in bad behaviour in order to 'fit in' with the group. The magistrate made the point that even though she participated in the sexualised behaviours, it didn't mean she would not be offended, humiliated or intimidated by some of the actions and remarks that were made. He said *"I found that everyone was entitled to draw the line somewhere, and those activities crossed the line"*.

A workforce that contains vulnerable workers or staff that are different from the wider workplace community may be particularly at risk. These may include men working in a female dominated workforce (i.e. men in the child care industry), younger workers or apprentices, or workers from overseas who are not used to working in a Western culture. Workers with a mental illness or a disability, and workers with attributes or characteristics that place them in a minority, are in a vulnerable position. Workers in remote or isolated geographical areas may also be at greater risk because of their isolation. All of these factors can contribute to inappropriate behaviours going undetected and are a significant risk in workplace bullying.

Leadership styles

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An autocratic manager, who exerts their authority and does not listen to the concerns or needs of the staff, may be bullying them even if this is not intentional. While there are times when it is perfectly reasonable for a manager to be directive, autocratic managers who exclude workers in the decision making process and rule through intimidation and punishment, can be bullying staff. Often the authoritarian manager does not realise that their behaviour is bullying, and will justify it as 'reasonable management practice', and say their staff as too sensitive. However, this style of management can be bullying if it is unreasonable by community standards, and has the potential to contribute to the psychological injury.

Managers who are very slack or laissez-faire can also contribute to workplace bullying in their work environment. This is because they fail to properly supervise or guide workers, provide little or no feedback and do not address performance or behaviour problems. Many of these managers want to be 'part of the group', and so they don't address inappropriate group behaviours. Some of them actually encourage poor behaviours because of their own actions. Think back to the case described earlier where the manager took part in the sexualised workplace behaviours that Ms Horman complained about. If a manager is behaving badly, or is condoning bad behaviours from others, it is almost impossible for a target to make a complaint and have it addressed seriously.

Employees and managers need consistent feedback addressing both their strengths and areas of their performance that are challenging to them. Part of a manager's performance includes their communication style, ability to work within a team and their leadership / management style. Often these aspects of performance management are overlooked in favour of the more

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technical aspects of the positions. Performance management systems that link in with other systems and policies allow behaviours to be monitored, rewarded and addressed if needed.

Performance management systems need to link in with the organisation's training and organisational development policies so that employees and managers are able to obtain coaching, training and mentoring in the areas identified as challenging for them.

Characteristics of targets and perpetrators

When discussing the target's characteristics as contributing to bullying, it is important not to blame them for the behaviour, but to draw attention to the reason that they may be bullied.

The bullying literature has quashed the legitimacy of a typical victim personality. However, sometimes the behaviours or the characteristics of the target have placed them at risk.

Some targets of bullying may be at greater risk because their characteristics are different from the typical employees in the group. For example, because of their sexuality, race, a disability or different religious beliefs they become 'one of them' not 'one of us', and are at a higher risk of being treated differently to the group because they do not fit in. These targets often do nothing to provoke the behaviour that they are exposed to. At times these targets can be 'mobbed' by the workgroup who attempt to force them out of the organisation. Typically the type of negative behaviours this group of targets are exposed to are covered by equal opportunity and anti-discrimination laws, although if the hostile behaviour is repeated and has the potential to cause harm then the behaviour can also be classified as workplace bullying.

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Targets do not very often acknowledge that their own behaviour might have triggered the bullying. However, some targets might invite bullying behaviour by provoking anger or retaliatory behaviours in others. This group of targets might behave in a way that makes them vulnerable to retaliation or victimisation from others. These include the whistle-blowers, or employees who want to dominate, or whose actions challenge others in authority or power. Employees who work harder and are more diligent (and are therefore a threat to others), or who have poor conflict management skills, might also provoke retaliation from others. People with high conflict personalities who become defensive in the face of perceived threat, or find it difficult to manage their own emotions in a constructive way, may be more likely to be both targets of bullying, and perpetrators. Employees with mental illness such as depression, anxiety or adjustment disorders might also be vulnerable to bullying because their illness makes them less able to constructively manage conflict.

It is important to highlight that while some targets' characteristics, initial behaviours or inapt way of coping with stress may contribute to retaliatory actions, the target's initial behaviours are not a justification for workplace bullying. Inappropriate behaviours need to be managed in a fair and just way, so that they do not escalate into bullying. Nobody deserves to be treated badly or disrespectfully at work. Nobody deserves to feel unsafe in their place of work.

It is important to emphasise that bullying indicates that bullying can only develop if the social group and the work environment are permissive of bad behaviours. This means that in

Comment [a1]: ?

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preventing bullying, we need to look beyond the target and perpetrator to the other factors in the environment that might let bad behaviours develop and escalate.

Most bullying is the result of conflict escalation, and emerges from unresolved workplace conflicts or high levels of constant pressure where one or both parties are not coping.

Bullying is a method used by some individuals to gain control of their environment, and all humans have the capacity to behave badly when stressed, confronted by intense pressure or when our mental and physical resources stretched to the limit. Some bullies might vent their frustrations or anger at vulnerable individuals, because of their own lack of emotional regulation and poor stress management skills. Perpetrators might also be very poor self-reflectors and not fully aware of how their behaviour is impacting others. In one of the studies that I carried out^{viii}, the accused bullies had very little insight into the effects of their behaviour on others around them. They justified their behaviour as jokes, employees misinterpreting their actions, and most reported that their behaviour was justifiable and reasonable management. Most participants denied the bullying allegations that were made against them. Ninety per cent reported that they had 'never' bullied anyone, and ten per cent reported that they had bullied someone on a 'rare occasion'. However, twenty-six per cent of the participants had the bullying allegations made against them substantiated. All participants reported that they had carried out some kind of negative workplace behaviours against others at some time during the previous twelve months. However, when describing the negative behaviours, they denied that these behaviours were a pattern of bullying but were reasonable, although unpopular aspects of their role.

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Some studies also suggest that displaced aggression^{ix} can contribute to bullying. This refers to a tendency for employees to act out against someone in authority (i.e. their team leader or junior manager) because it is unsafe to retaliate against greater authority (for example, the CEO or owner of the business) who they believe is responsible for the conflict or work stress. This displaced aggression may be responsible for what we know as 'upwards bullying', that is managers being bullied by their subordinates.

Lack of systems and policies

A policy is a directive from the employer in regard to the way things need to be done in the organisation. Organisations need policies for a range of reasons: to comply with laws, in response to stakeholder concerns, to change behaviour, to provide direction to employees or influence workplace culture. An organisation's policies, and accompanying procedures link together to provide the framework for the culture of the organisation. They say to all staff members: "this is how we do things around here".

A policy in regard to respectful workplace behaviours including sexual harassment, discrimination and workplace bullying provides employees, including managers with rules and guidelines that ensure work is performed and employees act in a manner that meets the organisation's standards of behaviour and is consistent with the current anti-discrimination, sexual harassment and workplace bullying (Occupational Health and Safety) laws. A policy is your organisation's position or "stance" on a particular issue. It reflects the rules that employees must adhere to, and the way processes are carried out. A policy is enforceable (i.e. breaches of the policy may incur disciplinary action).

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Respectful behaviour polices link with performance management policies, return to work policies, sick leave policies, occupational health and safety policies and a number of other organisational policies and procedures. An organisation that does not have a policy that provides clear direction to employees on how to behave or what to do in a variety of situations potentially has a number of problems.

The first is that employees do not know what their rights or responsibilities are in relation to the expectations of the organisation. Behaviours, ways of doing things and procedures are haphazard at the best with little direction. At the worse an employer leaves themselves open to legal action when an employee is injured at work and there is no policy directing safe ways of carrying out the different aspects of the job, or how to return to the job in a safe manner.

The risk factors described above, often don't produce bullying in isolation but can interact to contribute to poor behaviours that escalate into workplace bullying. If not identified and addressed early, these risk factors can contribute to cultures that support bullying and other types of inappropriate and potentially harmful behaviours.

It is for these reasons that Human Resource practitioners, and organisation development specialists need to focus on the different risks in the environment that may contribute to the emergence of bullying behaviour, and take steps to control or minimise those risks.

If organisations fail to address bullying from within this systemic risk management approach, it will be more difficult to prevent the behaviour from re-occurring, and other employees will be placed at risk.

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3. the adequacy of existing education and support services to prevent and respond to workplace bullying and whether there are further opportunities to raise awareness of workplace bullying such as community forums;

There appears to be little coordination both within individual States and Territories, and between States and Territories in regard to how workplace bullying is managed, how the community is educated about workplace bullying. Furthermore, the response to workplace bullying appears to be different within the different regulatory authorities within Australia resulting in vastly different interventions into complaints made to these authorities.

Most of the education and training that is conducted in regard to the prevention and management of bullying appears to be carried out as an adjunct or add on to anti-discrimination and sexual harassment education and training by State or federal Equal opportunity and anti-discrimination agencies (bullying is not within their jurisdiction, but links to unlawful discriminatory and sexually harassing behaviours. Otherwise, individual Unions, Working Women's Centers, business advocacy groups and individual consultants provide training in this area for organisations who request it. This results in a lack of consistency in the type of quality of training provided and confusion among both the business community, employees and advocacy groups about what behaviours constitute workplace bullying, and the best way to both prevent and manage the problem.

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These disparities provide an opportunity for a central agency to set the standard and direction in regard to what bullying is, how best to prevent and manage the problem and how individual complaints of bullying can be managed in a consistent manner.

- 4. whether the scope to improve coordination between governments, regulators, health service providers and other stakeholders to address and prevent workplace bullying;**

See response to point 3 above.

- 5. whether there are regulatory, administrative or cross-jurisdictional and international legal and policy gaps that should be addressed in the interests of enhancing protection against and providing an early response to workplace bullying, including through appropriate complaint mechanisms;**

Cross jurisdictional gaps exist in the crossover between behaviours that constitute workplace bullying, and behaviours that might also constitute unlawful discrimination and sexual harassment. Because unlawful discrimination and sexual harassment can result in injury, there is a cross over between the workplace occupational health and safety arena and the anti discrimination arena. Both of these jurisdictions afford different types of complaint pathways, and legal remedies and this can lead to confusion for targets of bullying who are seeking intervention or redress into their grievance.

There is also a cross over into the industrial jurisdiction if bullying behaviour results in a constructive dismissal or other breaches in industrial laws. Again, this makes the avenues for raising a complaint confusing at the very least for targets of workplace bullying.

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These gaps and confusing complaint pathways can be addressed through creating a single agency and complaint pathway that enhances protection and provides an early response to workers who are complaining about workplace bullying. Such agency can also provide training and education in the area of workplace bullying, and could follow the model adopted by the antidiscrimination agencies with a focus on bullying.

6. whether the existing regulatory frameworks provide a sufficient deterrent against workplace bullying;

There appears to be poor coordination and an adhoc approach to addressing bullying between the State regulatory bodies. This is evidenced in the different definitions of bullying between the States and the different ways of dealing with bullying between the States. For example, currently section 55 A (3) of the South Australian Occupational Health and Safety Act states that: (3) If—

- (a) an inspector receives a complaint from an employee that he or she is being bullied or abused at work; and
- (b) the inspector, after an investigation of the matter, has reason to believe that the matter is capable of resolution under this section, the inspector may—
- (c) take reasonable steps to resolve the matter between the parties himself or herself; and
- (d) if the matter remains unresolved after taking the steps required under paragraph (c), after consultation with the parties, refer the matter to the Industrial Commission for conciliation or mediation.

Because complaints are mediated, this means that there have been no S.A cases that have gone to court, and no case law in S.A in relation to workplace bullying. Further, because mediation is a confidential process no organisations have been held publicly accountable for any workplace injuries that have occurred as a result of workplace bullying and their inability to prevent and

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manage bullying. As such their wrongdoings are outside of public scrutiny. In contrast, the Victorian regulatory authority actively pursue organisations for breaches in their duty of care when a worker has sustained an injury due to workplace bullying. There is significant case law in Victoria that provide examples of what has occurred within the organisation, including lack of policies, lack of management action to intervene, lack of training or poor training, laissez-faire management styles and highly stressful workplace cultures.

Furthermore, workplace inspectors are not trained in the investigation of psychological hazards such as bullying, and are not trained to carry out psycho-social risk assessments or assessments into the psychosocial safety climate of organisations. Given the research that identifies the risks within organisations that contribute to bullying, the assessments of these risks is imperative if bullying is to be prevented from an evidence based practice.

One option that address the current adhoc approach to preventing, managing and addressing workplace bullying is to create a Commission headed by a Commissioner or Ombudsman that specifically addresses workplace bullying in the same manner that anti-discrimination Commissions currently address complaints of discrimination and sexual harassment.

This agency would have both a complaint handling and an education role. However, would not have a role in policing or inspecting (this would remain the role of the OHSW jurisdictions). A State or federal based Commission that is staffed by professionals with a good understanding of workplace bullying from an OHS risk management approach would accept referrals from the OHS jurisdictions and individuals. The Agency would in the first instant attempt to conciliate the complaint (just as State based anti-discrimination and HREOC) currently do with complaints of

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sexual harassment and discrimination, and then if conciliation was not successful, the Commissioner / Ombudsman may decide to refer the matter to a tribunal or court for adjudication. Complaints that are lodged with the 'bullying' Commission that fall under the jurisdiction of State based Equal opportunity or Human Rights Commission would be referred to the appropriate agency. However, the 'Bullying' Commission would act as a central point for employers and employees who want information and education about managing and preventing bullying. Multidisciplinary staff within such an agency would also be trained to conduct risk management audits and psycho/safety risk management assessments in order to provide evidence based information to employers in regard to where the risks lie within their organisation that might contribute to workplace bullying occurring. Such risk assessments may be court ordered by a tribunal, or can be requested by organisations.

7. The most appropriate ways of ensuring bullying culture or behaviours are not transferred from one workplace to another.

The risk management approach to preventing workplace bullying addresses the different classes of risks or antecedents that contribute to the development of workplace bullying. Screening employees for propensity to bullying is not effective, and only serves to stigmatise the 'bully' and move the focus away from the risk factors within the organisation that promoted the bullying behaviours. Furthermore, focusing on the bully / target dyad does little to address the workplace environmental factors that may have contributed to the emergence and development of bullying in the first place.

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The research shows that most people are capable of acting badly when placed in situations that foster that poor behaviour and are high stress. An employee will adapt to the culture of the workplace. Workplace bullying prevention needs to occur from a systemic perspective that is evidence based.

8. Possible improvements to the national evidence base on workplace bullying.

There are two possible options:

1. The establishment of a national research group in workplace bullying. Australia currently has number of academics who are contributing to this research and knowledge in this area. Increasing funding may contribute to a greater level of evidence based and applied research in the area. There is already a group of researchers, including myself who meet annually to discuss research opportunities and advances in bullying research and how it can be applied in the 'real world' through both the Australasian Workplace Bullying Research Network and the International Association of Workplace Bullying and Harassment (IAWBH).
2. The 'Workplace Bullying Commission' as proposed above could also have a research division that is linked to a university based research group. Funding into both establishing Australian normative data on workplace bullying, and also funding for research examining 'best practice' intervention strategies to both prevent and manage workplace bullying from an individual perspective (I.e best practice treatments for individuals who are injured through workplace bullying)

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and organisational interventions will assist in reducing the costly consequences of bullying on both individual, organisational, and the Australian economy.

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^v Hopper v Mount Isa Mines Ltd, Queensland Anti-Discrimination Tribunal, 1997

^{vi} Horman v Distribution Group Limited (2001 FMCA 52)

^{vii} Horman v Distribution Group Limited (2001 FMCA 52)

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